

### **Chapter 5.3-The Medical Termination of Pregnancy Act, 1971**

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**5.3.1. Introduction:** Objective of “The Medical Termination of Pregnancy Act, 1971”: An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

The Medical Termination of Pregnancy Act, 1971(Act No. 34 of 1971). Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:

The Medical Termination of Pregnancy Act, 1971 consist of total 8 sections along with subsections and amendment on 14<sup>th</sup> February, 2020 with THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2020. Highlights may illustrated as follows

The Medical Termination of Pregnancy Act, 1971 (Principal Act)	THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2020
<b>Section 1.</b> Short title, extent and commencement.	Short title and commencement.
<b>Section 2.</b> Definitions.-In this Act, unless the context otherwise requires.	Amendment of section 2. the following clause shall be inserted, namely:— '(aa) "Medical Board" means the Medical Board constituted under sub-section (2C) of section 3 of the Act;'; '(e) "Termination of pregnancy" means a procedure to terminate a pregnancy by using medical or surgical methods.'
<b>Section 3.</b> When Pregnancies may be terminated by registered medical practitioners.	Amendment of section 3. 3. In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:— 3 (2) a, b



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<b>Section 4.</b> Place where pregnancy may be terminated.- No termination of pregnancy shall be made in accordance with this Act at any place other than	No change
<b>Section 5.</b> Sections 3 and 4 when not to apply	Insertion of new section 5A. Protection of privacy of a woman.
<b>Section 6.</b> Power to make rules	Amendment of section 6. In section 6 of the principal Act, in sub-section (2), after clause (a), the following clauses shall be inserted, namely :— (aa), (ab), (ac).
<b>Section 7.</b> Power to make regulations.	No change
<b>Section 8.</b> Protection of action taken in good faith.	No change

### 5.3.2. The Medical Termination of Pregnancy Act, 1971 (Principal Act)

**Section 1. Short title, extent and commencement.** - (1) This Act may be called the Medical Termination of Pregnancy Act, 1971. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### **Section 2. Definitions.-In this Act, unless the context otherwise requires,-**

(a) "guardian" means a person having the care of the person of a minor or a lunatic; (b) "lunatic" has the meaning assigned to it in Sec.3 of the Indian Lunacy Act, 1912 (4 of 1912) ; (c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority, (d) "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in Cl.(h) of Sec. 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this Act.



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### **Section 3. When Pregnancies may be terminated by registered medical practitioners.-**

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.

Of opinion, formed in good faith, that,-(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.



(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian. (b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

**Section 4. Place where pregnancy may be terminated.-No termination of pregnancy shall be made in accordance with this Act at any place other than,-**(a) a hospital established or maintained by Government, or (b) a place for the time being approved for the purpose of this Act by Government.

**Section 5. Sections 3 and 4 when not to apply.-**(1) The provisions of Sec.4 and so much of the provisions of sub-section (2 of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

**Section 6. Power to make rules.-**(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice



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to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act ; and (b) such other matters as are required to be or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and If, before the expiry of the session which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**Section 7. Power to make regulations.-** (1) The State Government may, by regulations,- (a) require any such opinion as is referred to in sub-section (2) of Sec. 3 to be certified by a registered medical practitioner or practitioners concerned in such form and at such time as be specified in such regulations, and the preservation or disposal of such certificates;

(b) Require any registered medical practitioner, who terminates a pregnancy to give intimation of such termination and such other information relating to the termination as maybe specified in such regulations;

(c) Prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.



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(2) The intimation given the information furnished in pursuance of regulations made by virtue of C1. (b) of sub-section (1) of shall be given or furnished, as the case may be, to the Chief Medical Officer of the State..

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

**Section 8. Protection of action taken in good faith.** - No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act.

### **5.3.3. THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2020 (14<sup>th</sup> February, 2020)**

A BILL-further to amend the Medical Termination of Pregnancy Act, 1971. BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Medical Termination of Pregnancy (Amendment) Act, 2020. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. In the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the principal Act), in section 2,—** (i) after clause (a), the following clause shall be inserted, namely:-  
'(aa) "Medical Board" means the Medical Board constituted under sub-section (2C) of section 3 of the Act;';



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(ii) After clause (d), the following clause shall be inserted, namely: — '(e) "termination of pregnancy" means a procedure to terminate a pregnancy by using medical or surgical methods.'

**3. In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted,** namely:— "(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,— (a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or (b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the opinion, formed in good faith, that— (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality. Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. (2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act. (2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board. (2C)



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Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely: — (a) a Gynaecologist; (b) a Paediatrician; (c) a Radiologist or Sonologist; and (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."

**4. After section 5 of the principal Act, the following section shall be inserted, namely:—**

"5A. (1) No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act except to a person authorized by any law for the time being in force. (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment which may extend to one year, or with fine, or with both." 5. In section 6 of the principal Act, in sub-section (2), after clause (a), the following clauses shall be inserted, namely:— "(aa) the category of woman under clause (b) of sub-section (2) of section 3; (ab) the norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age under sub-section (2A) of section 3; (ac) the powers and functions of the Medical Board under sub-section (2C) of section 3."

**5.3.4. STATEMENT OF OBJECTS AND REASONS:** The Medical Termination of Pregnancy Act, 1971 (34 of 1971) was enacted to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. The said Act recognised the importance of safe, affordable, accessible abortion services to women who need to terminate pregnancy under certain specified conditions.



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2. With the passage of time and advancement of medical technology for safe abortion, there is a scope for increasing upper gestational limit for terminating pregnancies especially for vulnerable women and for pregnancies with substantial foetal anomalies detected late in pregnancy. Further, there is also a need for increasing access of women to legal and safe abortion service in order to reduce maternal mortality and morbidity caused by unsafe abortion and its complications. Considering the need and demand for increased gestational limit under certain specified conditions and to ensure safety and well-being of women, it is proposed to amend the said Act. Besides this, several Writ Petitions have been filed before the Supreme Court and various High Courts seeking permission for aborting pregnancies at gestational age beyond the present permissible limit on the grounds of foetal abnormalities or pregnancies due to sexual violence faced by women.

3. Accordingly, the Medical Termination of Pregnancy (Amendment) Bill, 2020, inter alia, provides for,— (a) requirement of opinion of one registered medical practitioner for termination of pregnancy up to twenty weeks of gestation; (b) requirement of opinion of two registered medical practitioners for termination of pregnancy of twenty to twenty-four weeks of gestation; (c) enhancing the upper gestation limit from twenty to twenty-four weeks for such category of woman as may be prescribed by rules in this behalf; (d) non applicability of the provisions relating to the length of pregnancy in cases where the termination of pregnancy is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board; (e) protection of privacy of a woman whose pregnancy has been terminated. 4. The proposed Bill is a step towards safety and well-being of women and will enlarge the ambit and access of women to safe and legal abortion without compromising on safety and quality of care. The proposal will also ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy.

5. The Bill seeks to achieve the above objects.



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